

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

JESSE E. GANTT, JR.)

Plaintiff(s),)

vs)

THE HEIRS AT LAW OF ALFRED K. LYNARD, LAURA MAE FLOYD, THE HEIRS AT LAW OF THOMAS LEE, LUTHER LYNARD, HANNA TREE FARM LIMITED PARTNERESHIP, PINE ISLAND PROPERTIES, L.P., STANLEY D. MACK, STANLEY MACK, THE HEIRS AT LAW OF RICHARD GADSON, JOE LOUIS GADSON, and all other persons unknown, having or claiming any rights, title, interest in or lien upon the real property described in the Complaint herein, being designated collectively as JOHN DOE and SARAH ROE, including all minors, persons in the Armed Forces, insane persons and all other persons under any other disability who might have or claim to have any right, title, estate, interest in or lien upon the real property described in the Complaint herein.

Defendant(s).)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2014-CP-07-2618

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT FOR AN EASEMENT BY NECESSITY

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SC Court of Appeals

This matter came before me upon cross motions for summary judgment on the Plaintiff's Second Cause of Action for an Easement by Necessity over the lands of the Defendants Hanna Tree Farm, L.P. and Pine Island Properties, L.P. Present at the hearing were the attorney for the Defendants, Marion C. Fairey, Jr., Esq. and the attorney for the Plaintiff, Alysoun M. Eversole, Esq.

FINDINGS OF UNDISPUTED FACT

I find from the Affidavit of Cherese Handy, title abstractor, and the exhibits attached thereto, that the chains of title for both the Plaintiff's land and the Defendants' land show indisputably that their common grantor was Thomas Lee. I further find that the dates of the deeds in to Thomas Lee and

the dates of the deeds conveying title out from Thomas Lee show the severance of title and that the Defendants' land is the parent parcel of the Plaintiff's land.

I find from the Affidavit of Chereese Handy that the Plaintiff's property is landlocked; and I find from the Affidavit of the Plaintiff, Jesse Gant, Jr., that a necessity for access to a public road exists.

I find that Laura Towne Road, a private road situate on the Defendant's property, was not in existence at the time of the severance of the Plaintiff's land from its parent parcel in 1918.

CONCLUSIONS OF LAW

The property that is the subject of this action is situate in Beaufort County and this court, therefore, has jurisdiction to hear the matters set forth in the Plaintiff's Second Cause of Action for an Easement by Necessity over the lands of the Defendants.

Rule 56(c), SCRCP, provides that summary judgment is appropriate when there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Boyd v. Bellsouth Tel. Co.*, 369 S.C. 410, 418-19, 633 S.E.2d 136, 140-41 (2006). This court must look at the facts in the light most favorable to the non-moving party. In this instance, both parties have moved for summary judgment.

ARGUMENTS OF COUNSEL

The Defendants argue that the Plaintiff is not entitled to an easement by necessity over the lands of the Defendants because Laura Towne Road was not in existence at the time of the severance of the Plaintiff's land from its parent parcel, but if a right of access did exist at one time, the Plaintiff's predecessors in title abandoned it from nonuse over the years. In looking at these facts in the light most favorable to the Plaintiff, I must disagree. If a person owns 100 acres of land and conveys ten acres in the middle of the 100 acres without granting a specific method of ingress and egress over the remaining 90 acres, the law and public policy presumes a right of access exists somewhere over the 90 acres to a nearby public thoroughfare. Furthermore, the South Carolina Supreme Court has said "[T]o establish such a right, nothing is required but to show the necessity. Neither time nor occupation are

necessary. If the necessity has existed but for a day, the claim is as well founded as where it has existed for half a century; and although the right may have never been enjoyed, yet its existence will be coextensive with the necessity.” *Brasington, v. Williams, et al.*, 143 S.C. 223, 141 S.E. 375, 383 (S.C., 1927). I also find that public policy dictates that where the necessity exists, the right of access cannot be abandoned. The Defendant’s Motion for Summary Judgment must be denied.

I find that, even in the light most favorable to the Defendants, the undisputed facts show the elements for an easement by necessity over the Defendants’ land have been met by the Plaintiff as a matter of law. The undisputed facts show (1) unity of title in Thomas Lee as the common grantor for both Plaintiff’s and Defendants’ properties, (2) severance of Thomas Lee’s title by his deed to Alfred Lynard, Plaintiff’s predecessor in title, in 1918 and (3) the necessity of access for the Plaintiff. *See, Boyd v. Bellsouth Tel. Co.*, 369 S.C. 410, 418-19, 633 S.E.2d 136, 140-41 (2006).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff’s Motion for Summary Judgment is Granted and that the Plaintiff, Jesse Gantt, Jr. possesses a right of access and easement by necessity over the land of the Defendants, Hanna Tree Farm, L.P. and Pine Island Properties, L.P.

IT IS FURTHER ORDERED that the scope of the Plaintiff’s right of access remains to be determined in further proceedings before this Court.

DONE AND ORDERED this _____ day of April, 2017.

Marvin H. Dukes, III, Master-in-Equity and
Special Circuit Court Judge

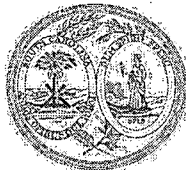
FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Beaufort Common Pleas

Case Caption: Jesse E Gantt Jr VS Heirs at Law of Alfred K Lynard The ,
defendant, et al
Case Number: 2014CP0702618
Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069